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Haven - History of Grants under The Great Council for New England - 1869

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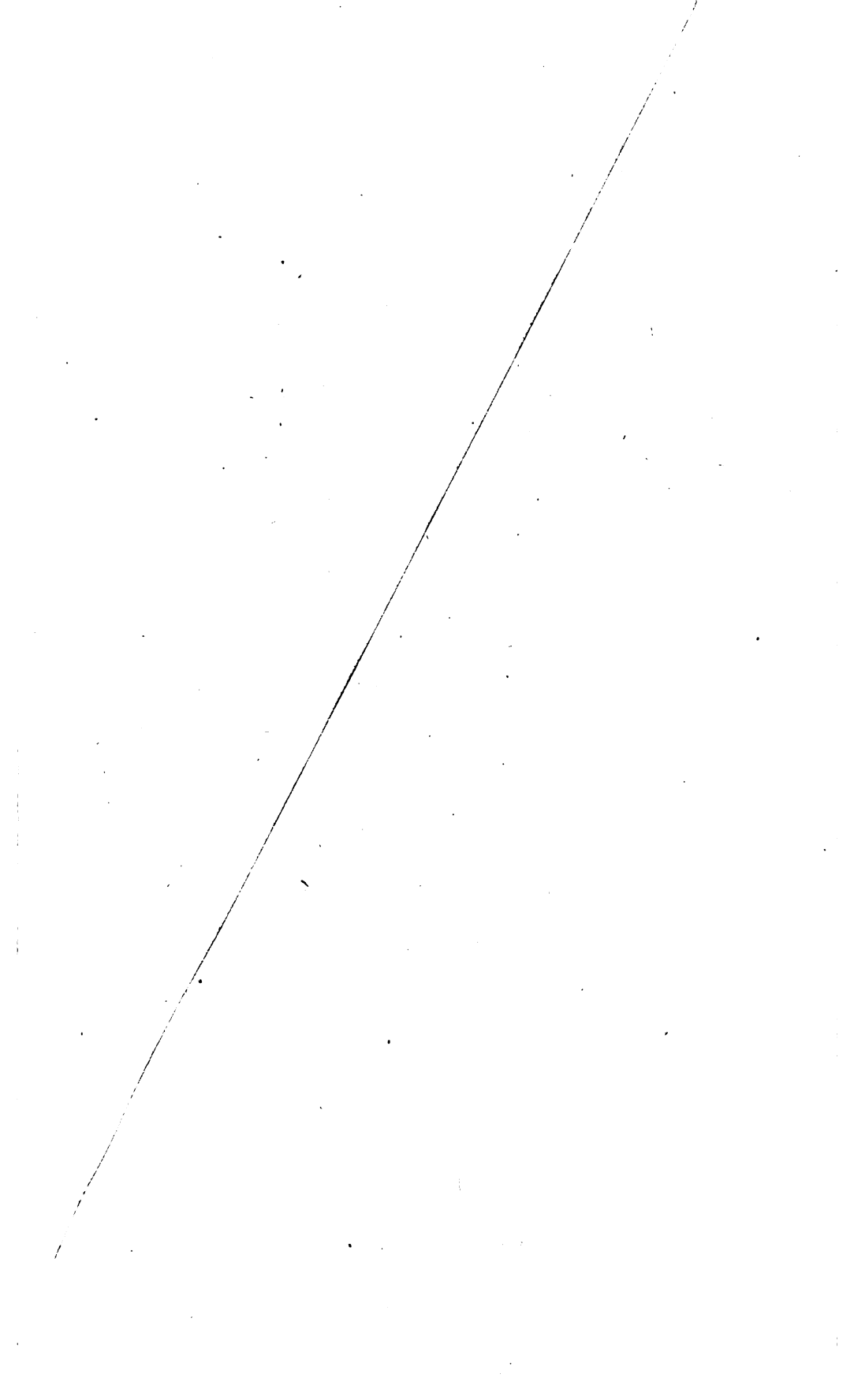


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HISTORY OF GRANTS

UNDER

THE GREAT COUNCIL FOR NEW ENGLAND.

BY SAMUEL F. HAVEN, A.M.

With the regards of
S. F. Haven.

HISTORY OF GRANTS

UNDER THE

GREAT COUNCIL FOR NEW ENGLAND:

A LECTURE

OF A

COURSE BY MEMBERS OF THE MASSACHUSETTS HISTORICAL SOCIETY,

Delivered before the Lowell Institute,

JAN. 15, 1869.

BY

SAMUEL F. HAVEN, A.M.

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HISTORY OF GRANTS

UNDER

THE GREAT COUNCIL FOR NEW ENGLAND.

THE subject assigned to me for a lecture to-night is, "History of Grants under the Great Council for New England."

However important this may be in a historical point of view, so far as pleasurable interest is concerned it certainly has a rather dry and unpromising aspect.

Moreover, it was said of this Great Council for New England, by the learned Dr. Belknap, after he had tried in vain to harmonize their proceedings, that —

> "Either from the jarring interests of the members, or their indistinct knowledge of the country, or their inattention to business, or some other cause which does not fully appear, their affairs were transacted in a confused manner from the beginning; and the grants which they made were so inaccurately described, and interfered so much with each other, as to occasion difficulties and controversies, some of which are not yet ended."

So, too, Governor Sullivan in his work on "Land Titles in Massachusetts" declares that the legislative acts of the Council for New England and their judicial determinations "were but a chain of blunders;" and "their grants, from the want of an accurate knowledge of the geography of the territory, were but a course of confusion."

Possibly, it was with the hope of obtaining additional light upon these obscurities and perplexities, to the extent of reconciling apparent discrepancies, that the subject was selected for treatment in this series of historical lectures. But intricacies which learned historians and acute lawyers have failed to elucidate, it may be presumed are not susceptible of a distinct and

definite solution, such as Courts require for the establishment of a title to property; and we may be compelled to find in a narrative of the circumstances under which they had their origin their only reasonable explanation.

You will therefore be spared a technical dissertation upon charters, patents, grants, and other methods of conveying territorial rights, and be asked to listen to a relation of the rise, the character, the operations, and the end of the great corporation in England created by James I. on the 3d of November, 1620, consisting of forty noblemen, knights, and gentlemen, and called "The Council established at Plymouth, in the County of Devon, for the Planting, Ruling, and Governing of New England in America."

It will be necessary to go back a little; not indeed to the days of Adam and Eve, as did our distinguished New England chronologer, Dr. Prince, who devoted so much time and space to the preliminary annals of the *world*, that he died before completing those of this limited portion of the globe, which were the real object of his work, — but to the beginning of England's conventional title to American possessions. It was a *conventional* title, inasmuch as it rested upon an understanding among the so-called *Christian* powers, that the rights of nations and peoples, who were not at least nominally Christian, should be entirely disregarded. The sovereigns of Europe carried out in practice the principle which the Puritans of Cromwell's parliament were said to have asserted in theory, and apparently regarded the scripture promise that the saints shall inherit the earth as a mere statement of their own just prerogative. Among Catholics, the Pope, as an inspired administrator, distributed newly discovered regions according to his inclination and infallible discretion. His assignments of continents and seas by the boundaries of latitude and longitude were valid in Spain and Portugal and France; but in England the King, when he had become also the head of a church, claimed authority to empower his subjects to discover "remote, heathen, and barbarous lands, not actually possessed of any Christian prince or people, and the same to hold, occupy, and enjoy, with all commodities, jurisdictions, and royalties, both by sea and land;" of course, in subordination to his own paramount authority, but with no reference to the supremacy of the Roman pontiff.

John and Sebastian Cabot were commissioned, in like phraseology, by Henry VII., "to seek out countries or provinces of the heathen and infidels, wherever situated, hitherto unknown to all Christians, and to subdue and possess them as his subjects." If their discoveries had been followed at once by possession, the papal sanction might have been deemed essential to a sound title; but England had long been a Protestant country before steps were taken to maintain her claims to a portion of the New World. Remote events, like distant objects, are apt to seem crowded together, for want of a perspective to make the intervals which separate them evident to our perceptions. Thus we often fail to realize the duration of uneventful periods of history which come between the strifes and commotions, or other great occurrences which chiefly occupy the attention of both the historian and his reader. From A.D. 1495, the date of the commission to the Cabots, to A.D. 1578, the date of the letters patent to Sir Humphrey Gilbert, under which possession was first taken for the English crown, the lapse of time exceeds that of two generations of men, as these are usually estimated.

Meanwhile, circumstances were silently and indirectly, as well as slowly, preparing for the settlement of this portion of the American continent. Unrecorded voyages were annually made to our coasts for fish by the Spaniards, Portuguese, and French; the fasts of the church causing a large demand for that article of food in Catholic countries. The people bordering on the Bay of Biscay were hereditary fishermen. Their ancestors had captured whales in their own tempestuous sea; and Biscayans, or *Basques*, as they were more frequently termed, were in great request as experts for the fisheries at Newfoundland, and along the shores of New England. They professed to believe that their countrymen visited the same fishing-grounds before Columbus crossed the ocean. The business was so lucrative that the reports first brought home by the Cabots of the great abundance of codfish in those regions produced an excitement among the people engaged in that trade, not unlike that which rumors of gold in California and Australia have created in more recent times.

No account has been preserved of the *commencement* of fishing voyages to the American seas; but they can be traced back to

within half a dozen years of the return of the Cabots; and twelve or fifteen years later as many as fifty vessels of different nations were employed on the Grand Banks.

Of such voyages no journal was kept and no history was written; because it was the policy of the adventurers to keep these prolific sources of wealth, as much as possible, from attracting the attention of competitors.

The presence of European vessels on our shores, in considerable numbers, a century before the arrival of the Pilgrims, may account for traditions among the natives, and the occasional discovery of articles of European manufacture in their graves, that have been supposed to point to the visits of the Northmen at far more distant periods.[1]

A process of preparation not less marked and effective was at the same time going on in England itself. Until the reign of Henry VII., that kingdom had been behind all other European States in mercantile enterprise. Italy, Spain, Portugal, Holland, and even Germany, were before her in commerce or manufactures. The fluctuations of trade, in the removal of its seats from one place or country to another, are among the marvels and curiosities of history. The chief wonders of the world — the costly and gigantic remains of decayed cities, where now all is silence and desolation — are the fruits of accumulated capital in what were once the forwarding and distributing stations of trade. Thebes, Babylon, Nineveh, Palmyra, Tyre, and Carthage were great and magnificent, because, as the prophet Nahum saith of Nineveh, " They multiplied their merchants above the stars of heaven."

Wherever traffic has found a seat and centre, art, architecture, enterprise, and political power have been its inevitable fruits. The growth and decay of these local influences, and their distribution in turn among the kingdoms of the earth, though springing from natural causes, belong no less to the mysterious operations of Providence. It was the commercial decline of Italy (the industrial Italy of the Middle Ages), whose prodigal remains of æsthetic splendor are the memorials of her merchant princes, that

[1] When Captain John Smith visited the Susquehanna Indians, in 1608, they had utensils of iron and brass, which, by their own account, originally came from the French of Canada.

carried Venetian navigators to England, among them the family of Cabots, seeking employment for the exercise of their native arts.[1] At the same time, the incessant wars upon the continent were driving tradesmen and manufacturers from the free cities of central Europe, which they had built up and enriched; many of whom took refuge in the British Isles, which thus easily acquired the advantages of skill and experience in the production and sale of important fabrics. England's opportunity had come. Though not lying in the course of the world's great thoroughfares, yet, by insular position, favorably formed for maritime pursuits, her chances of wealth and power from the magic agencies of commerce had at length arrived. Through the reigns of Henry VII., Henry VIII., Edward VI., and the bloody Mary, to their full fruition in the Augustan era of Queen Elizabeth, these causes were not only increasing the riches, but developing wonderfully the mental and physical character and capacities of the British people. More independent, politically and socially, than their neighbors in Holland, they shared with them the accumulation of the precious metals which flowed from American mines, through Spain and Portugal, to the chief marts of trade, and experienced the stimulating effects of capital in all departments of life and action. Enterprise, extravagance, ambition, emulation, greed, were the healthy and unhealthy consequences of a prosperous and excited community.

The tendency to a sort of theatrical exaggeration in sentiment and manners that followed upon this development of physical resources and mental energies was perhaps a natural result. Man has often been declared to be the product of the peculiarities of the period in which he was born. Well might Shakespeare say of his own time, "All the world is a stage, and all the men and women are mere players;" for the whole reign of Elizabeth was a theatrical pageant, where Leicester and Essex, Sidney, Southampton, and Raleigh, and not excepting Bacon, the representative of philosophy, personated the various characters of an heroic drama; while the many-sided Shake-

[1] The superior naval advancement of Italy at that period is illustrated by the fact, that the leaders of discovery in the western hemisphere — Columbus in the service of Spain, Cabot in the service of England, Vespucius in the service of Portugal, and Verrazano in the service of France — were Italians.

speare was himself a dramatic embodiment of the entire intellectual expansion of his age.

There lived then a certain remarkable woman, — remarkable for having two sons of different fathers, whose heroic temperament and versatile talents must have been derived from their common mother. The half-brothers, Humphrey Gilbert and Walter Raleigh, were more alike in tastes and genius than is often seen in a nearer relationship. It was the blood of the *Champernons*, — a name that has a place of its own in our colonial history, — and not that of the *Gilberts* or *Raleighs*, which made them what they were.

To these two men, of honorable birth and social standing, each of whom combined the habits and qualities of a soldier with those of a studious scholar, and could handle with equal skill the pen and the sword, we owe it that this New England where we live, and this entire Union of vigorous States, are not dependencies of France or Spain, or such as are those feeble provinces which sprang from French or Spanish colonization.

Whatever constructive right or title England had acquired by the discoveries of the Cabots, a little more delay, and their assertion would have been no longer practicable, except at the point of the sword. It was Gilbert and Raleigh who, in the nick of time, gave this direction to British energies; and apparently nothing but the grand ideas and exhaustless resolution of these great minds, and their inspiring influence amid disappointment and disaster, saved an indefinite and uncertain claim by means of a positive and substantial possession.

The rival claims of the leading European powers, at this juncture, to the soil of our continent north of the Gulf of Mexico, were not better defined, or more easy of satisfactory adjustment upon legal and equitable principles, than are those of the grantees of the Great Council for New England, which are now the particular subject of consideration. The rules and precedents of national and international law furnish a convenient phraseology for the discussion of questions relating to territorial ownership and boundaries, as phrenology provides a convenient nomenclature for describing the faculties of the mind although it may not be admitted to determine their actual position and limits. In larger divisions of land, even where private citizens

alone are concerned, the most tenacious grasp is apt ultimately to acquire the legal title. Time heals defects, and the pertinacious possessor finds his right to hold and convey secured by circumstances, and protected by judicial tribunals.

The English jurists of the reign of Elizabeth maintained, that discovery and possession united could alone give a valid title to a new country. But how far asunder in point of time might these acts be, and yet retain their virtue when brought together? And what if another discovery and a possession came between them? Will a possession fairly taken, but not continued by uninterrupted occupancy, avail for a completion of title?

The answers to these questions are not so distinctly given as to enable us to found upon them, clearly, the right of the British crown to issue patents and charters, empowering its subjects to hold and distribute the regions which, under the names of Virginia and New England, embraced a large portion of the North American continent.

John and Sebastian Cabot discovered, and to some extent explored, the American coast (A. D. 1497–8) from Labrador to the Carolinas, more than a year before the continent had been seen by Columbus or by Americus Vespucius; but the subjects of other powers had visited these shores familiarly, and some of them had taken formal possession in the name of their sovereign, long before Sir Humphrey Gilbert came to Newfoundland in 1583.

On behalf of the King of Portugal, Cortereal ranged the northern coast only two years later than the Cabots, and gave the name Labrador to the country still so called.

A map of the Gulf of St. Lawrence and the neighboring country was made by the French, from their own observations, as early as 1507.

It is said, that in 1522 there were fifty houses at Newfoundland occupied by people of different nations. There were probably some English among them, although the English fisheries were then chiefly in the direction of Iceland.

In 1524, an expedition for discovery was sent by Francis I. of France, under John De Verazzano, a Florentine, who explored our coast from the Carolinas to Newfoundland, as the Cabots had done, but with more particularity, and called the country

NEW FRANCE; and in the same year Stephen Gomez, in the service of Spain, sailed from Florida to Cape Race; his object being, as was then the case with almost all the navigators that preceded him here, to find a passage through to the Pacific Ocean, then called the South Sea.

After this, while the Spaniards were seeking a foothold in Florida, the French, in a series of expeditions from 1534 to 1542, with Cartier as chief leader, were, on behalf of France, erecting monuments in token of possession, and planting colonies, in the region of the gulf of St. Lawrence. Having endured several seasons of trial and suffering, these colonies came to an end, as settlements; leaving, it is claimed, some of their members still in the country. With the exception of a disastrous expedition in 1549, when Roberval and a numerous train of adventurers were supposed to have perished at sea, no farther measures were taken by the French to re-establish themselves in the North till near the close of that century.

Thus, while England had neglected to maintain her rights as a discoverer, Spain, Portugal, and France had explored the same parts of North America; and France had planted her subjects on the soil, without formal remonstrance, so far as is known, from any other power. The English fishery at Newfoundland had become important in 1548; but no record has been preserved of any attempt at colonization.

This negligence, or indifference, was first broken by Sir Humphrey Gilbert. He had written a discourse to show the probability of a passage by the north-west to India, which may have promoted the voyage of Frobisher to the Arctic Sea in 1576; and, in 1578, he received from Queen Elizabeth authority to discover and take possession of remote and barbarous lands unoccupied by any Christian prince or people, as the Cabots had been empowered to do by Henry VII. It is noticeable, that the patent to Gilbert contains no allusion to the Cabots, or to any rights of the crown derived from former discoveries. For aught that appears in the instrument itself, this was an independent and original enterprise for discovery and conquest, with a right on the part of Gilbert to possess and govern the discovered and conquered lands in subordination to the Queen. But such was not the view of the grantee himself. He did not survive to be

his own historian; but we learn from the narrative of Edward Haies, "a principall actour in the same voyage," —

1st, That the enterprise of Gilbert was based upon the consideration, that "John Cabot, the father, and Sebastian, his son, an Englishman born, were the first finders out of all that great tract of land stretching from the Cape of Florida unto those Islands which we now call the Newfoundland; all of which they brought and annexed unto the crown of England."

2d, That if a man's motives "be derived from a virtuous and heroical mind, preferring chiefly the honor of God, compassion of poor infidels captived by the devil, tyrannizing in most wonderful and dreadful manner over their bodies and souls," and other honorable purposes specified, "God will assist such an actor beyond the expectation of man." Especially as, "in this last age of the world, the time is complete for receiving also these Gentiles into his mercy; . . . it seeming probable by the event of precedent attempts made by the Spaniards and French sundry times, that the country lying North of Florida God hath reserved to be reduced unto Christian civilization by the English nation."

"Then seeing the English nation only hath right unto these countries of America, from the Cape of Florida northward, by the privilege of first discovery, . . . which right also seemeth strongly defended on our behalf by the powerful hand of almighty God, withstanding the enterprises of other nations; it may greatly encourage us upon so just ground, as is our right, and upon so sacred an intent as to plant religion, to prosecute effectually the full possession of these so ample and pleasant countries appertaining unto the crown of England; the same (as is to be conjectured by infallible arguments of the world's end approaching) being now arrived unto the time by God prescribed of their vocation, if ever their calling unto the knowledge of God may be expected."

This conviction, that the end of the world was near, was the source of much of the heroic adventure, and the excuse for much of the merciless barbarity towards the natives, which attended the occupation of this continent by Europeans. The WORD was first to be preached among all nations; and soldiers and priests alike believed themselves agents of heaven in the fulfilment of prophecy, when, acting under papal or royal authority, they compelled the submission of heathen nations to the

Christian faith by violence and bloodshed. Columbus thought he had ascertained by calculation, that there remained but one hundred and fifty years from his time before the final catastrophe. "My enterprise," said he, "has accomplished simply that which the prophet Isaiah had predicted, — that, before the end of the world, the gospel should be preached upon all the earth, and the Holy City be restored to the church." Nearly ninety years of that remnant of time had expired, when, influenced by similar sentiments, Sir Humphrey Gilbert set forth on a similar errand.

It was his intention to take possession at Newfoundland for the northern portion of the country, and at some point nearer Florida for the southern portion of the English claim; going first to Newfoundland to gain the advantage of a favorable season of the year, and the period when fishing vessels were most numerous at that station. The ships of different nations then engaged in that employment, were one hundred from Spain, fifty from Portugal, and one hundred and fifty from France, to fifty from England. But England had become full-blooded and dangerous, and already aspired to rule the seas. She had the best ships, which, as Haies expresses it, were "admirals" over the rest, and controlled the harbors.

Gilbert landed, and calling together the merchants and ship-masters of the several nations, took possession with all the prescribed formalities. He promulgated laws, to which the people, by general voice, promised obedience; and made grants of land, the recipients covenanting to pay an annual rent, and yearly to maintain possession of the same by themselves or their assigns as his representatives.

We know that Gilbert was lost at sea, without having been able to make a like demonstration elsewhere. But his proceedings at Newfoundland have been regarded by all English writers as substantiating the English title to the whole country. No distinct colony was left behind him; but the British domination continued to be recognized by the mixed population on the shore, and was, when necessary, enforced by summary process among the ships.

On learning the death of his heroic half-brother, Sir Walter Raleigh, his partner in the enterprise, immediately obtained a similar commission and patent in his own name, and sought to

complete their purpose by planting a colony at the South. It was his fortune, too, to fail in that part of his design which contemplated the establishment of settlements under his own rule and tributary to himself; but he was the first to possess and occupy the soil of Virginia; and, although interrupted for a time, the occupancy of British subjects in that region became permanent, without the interference of rival attempts at colonization.

It was under such circumstances, and in such manner, that the title of England, be it good or bad, to a portion of our continent, was originally acquired and maintained.

It seemed to be desirable to refer to the nature of that title, to the civil condition of England, to the operations of trade and fishery, and to the colonial projects which preceded the incorporation of that semi-commercial, semi-political body known as the Great Council for New England. For it was the wealth of the mercantile classes, resulting in some degree from the discovery of new sources and new courses of trade in distant regions, that made the nobility and gentry eager to partake of their gains. The "Fellowship of English Merchants for the Discovery of New Trades," sometimes called also the Muscovy or Russian Company, which had a charter as early as 1554–5, had been remarkably successful. Immense fortunes, like those of Sir Thomas Smith and Sir John Wolstenholm, and others who took part in the Virginia enterprises, had been realized by merchants who became knights and baronets. The wealth of the House of Commons far exceeded that of the House of Lords. The great increase of extravagance in private expenditure had become a serious drain upon the resources of the nobility; and it was the hope of profit from the fur trade and fisheries, combined with the advantage and dignity of territorial proprietorship, that caused the formation and governed the conduct of the New-England Company, while ignorance of business and embarrassments arising from conflicting claims, domestic and foreign, brought it to an end.

There is another preliminary fact, which is of great interest to New England, and especially to Massachusetts. At the beginning of a new century, A. D. 1602, Raleigh's colonies had disappeared, and all traces of them were lost. Dr. Holmes, in

his Annals, remarks, that then "in North America north of Mexico not a single European family could be found." If we understand by *family* a household of men, women, and children, this statement may be nearly correct; and yet it is estimated that there were at that time, at Newfoundland, as many as ten thousand men and boys employed on board and on shore in the business of taking and curing fish. Colonization, however, had been virtually abandoned in despair. At that critical period, it was revived by two men whose service to this country in that respect has never been properly or sufficiently acknowledged. These were the Earl of Southampton and Bartholomew Gosnold: the first, the friend and patron of Shakespeare, and the subject of many of his sonnets, who had impaired his fortune by his liberality to men of letters; the other, an intrepid mariner from the west of England, who became the leading spirit, and one of the first victims, of the attempt to renew the settlements of Virginia.

You are all familiar with the story of Gosnold's visit to Massachusetts Bay, in 1602; and it hardly needs to be stated, that the expedition was undertaken with the consent of Raleigh, as coming within his jurisdiction; that the cost was chiefly defrayed by the Earl of Southampton; that the design of the voyage was to find a direct and shorter way across the ocean and a proper seat for a plantation; that the company consisted of thirty-two men, twenty of whom were to remain in the country; that, in fact, they were the first to take a straight course across the Atlantic, instead of the usual passage to Virginia by the West Indies; that they reached land near Salem Harbor; that from them came the familiar names of Cape Cod, Martha's Vineyard, the Elizabeth Islands, &c.; and that they built a fort at Cuttyhunk in Buzzard's Bay. They were delighted with the country, but were compelled to return home for larger supplies. Before they could come back better provided for a permanent settlement, Queen Elizabeth died, Raleigh was thrown into prison by her successor, and all schemes for American colonization were of necessity to be abandoned, or organized upon a new basis under a new sovereign himself destitute of energy and enterprise. Fortunately, Gosnold and his companions were not merely men of action, but could write and speak as well; and to

their glowing narratives and zealous exertions, aided by the famous Hakluyt, and men of influence at Court, historians ascribe the procurement of the charter of 1606, from which the ultimate settlement of the United States and the resulting heritage of territorial rights are to be dated.

The fact of Gosnold's selection of our own coast for an intended colony is sufficiently well known; but I am sure, that the characters and services of the leaders of that little company are not sufficiently understood and appreciated, or, instead of the farce which was enacted over the later and inconsequential landing and brief continuance of a body of outlaws on the coast of Maine, all New England would have united in measures to honor the memory of the real founders of permanent habitation and indisputable title within our national bounds.

For some reason, the charter of 1606 did not embrace the whole of the British claim. It extended no farther south than the present limits of North Carolina, and no farther north than the present limits of the State of Vermont; that is, from the thirty-fourth to the forty-fifth degree of latitude. Within these bounds there were to be two colonies under separate administrations, subject to a paramount administration in the mother country. The southern colony could plant anywhere between the thirty-fourth and forty-first degrees, and the northern colony, anywhere between the thirty-eighth and forty-fifth degrees; leaving three degrees, or the space from the southern point of Maryland to the southern point of Connecticut, as common ground.

The northern company had need of hot haste in choosing a location; as, in the race for possession, the French had once more taken the lead, and renewed their plans of founding an American empire. Having before sent over a ship-load of felons from the jails, who were left to take care of themselves at the Isle of Sables, a more formidable expedition was organized in 1603, the year succeeding Gosnold's memorable voyage. Henry the Great being then King of France, a gentleman of his household, named De Monts, received from him a patent of the American territory from the fortieth to the forty-sixth degree of north latitude, with power, as lieutenant-general, to colonize and rule it. It will be noticed that this grant almost exactly covers the

territory assigned to the northern colony of Virginia by the English charter of 1606. De Monts lost no time in entering upon his dominion; and he and his followers settled themselves in Nova Scotia, at *Monts désert* (now called Mount Desert), and along the coast of Maine as far as the Penobscot. They looked into Boston Harbor in search of a more genial climate, but were repelled by the hostile attitude of the natives.

The company of outlaws which, in imitation of the French, Chief-Justice Popham sent to the mouth of the Sagadehoc or Kennebec River, in 1607, was undoubtedly intended and expected to check the advances of that nation. It not only failed, but its failure paralyzed the energies of the northern company of Virginia for many succeeding years.

That portion of the duplex contrivance of James I. accomplished nothing important of itself until, after much opposition, a separate organization and charter were obtained in 1620. In the mean time, its twin-brother, at Jamestown, flourished, after a fashion; it is doubtful whether most aided or hindered by the frequent interference of the English monarch, that "Dominie Sampson" spoilt into a king, who believed himself to be the fountain of wisdom, not less than the fountain of honor. It was able, in 1613, to fit out an armed vessel, commanded by Captain Argall, which broke up the French settlements at Port Royal, Mount Desert, &c., and compelled their inhabitants to retire towards Canada; protesting all the while, that whatever abstract rights Great Britain might possess, if any there were, the Virginia charter expressly excepted in its grants regions already occupied by any Christian prince or people; they (the French) being a Christian people, in occupation of the places from which they were driven two years before the Virginia charter was made; which was very true.

Upon the island of Manhattan at the mouth of Hudson's river, on the common ground of the two so-called Virginia companies, the Dutch had located themselves, claiming title from its discovery by Hudson, in their service. While returning from his expedition against the French, Captain Argall called on them also, and required submission. They were too feeble to resist; but the next year a new governor came from Amsterdam, with reinforcements, asserting the right of Holland to the country, and

refusing the tribute which his predecessor had consented to pay to the English.

It was to this inheritance, of not undisputed possessions, to which the new corporation, styled "The Council established at Plymouth, in the County of Devon, for the Planting, Ruling, and Governing of New England in America," succeeded on the 3d of November, 1620.

The charter, after referring to the previous charter of 1606, and the changes that had since been made for the benefit of the southern company, states that Sir Ferdinando Gorges, and other principal adventurers of the northern company, with divers persons of quality who now intend to be their associates, resolving to prosecute their designs more effectually, and intending to establish fishery, trade, and plantation, within the precincts of the said northern company; for that purpose, and to avoid all confusion and difference between themselves and the other company, have desired to be made a distant body.

It proceeds to grant to the persons named, the territory from the fortieth to the forty-eighth degree of north latitude and through the main land from sea to sea, to be called NEW ENGLAND; that is, from the latitude of Philadephia to the middle of Newfoundland, and through all that width from the Atlantic to the Pacific; varying a few degrees of latitude from the bounds prescribed in the original patent.

They were to be one body politic and corporate, to consist of forty persons, and no more, with perpetual succession. Vacancies were to be filled by the members. They were empowered to establish laws not contrary to the laws of England; and to their "governors, officers, and ministers," according to the natural limits of their offices, was given authority to correct, punish, pardon, and rule all English subjects that should become colonists, according to the laws and instructions of the Council; and in defect thereof, in cases of necessity, according to their good discretions, in cases criminal and capital as well as civil, and both marine and others. Such proceedings to be, as near as conveniently may be, agreeable to the laws, statutes, government, and policy, of the realm of England. The continent, from the fortieth to the forty-eighth degree, from sea to sea, was absolutely given, granted, and confirmed to the said Council and their suc-

cessors, to be holden, as of the manor of East Greenwich, in free and common socage,[1] as distinguished from the feudal tenure of personal service; and all subjects were forbidden to trade or fish within their limits without a license from the Council under seal.

The rank and personal standing of the grantees corresponded to the extent of territory and the magnitude of the powers bestowed upon them. They consisted of many of the highest nobility of the kingdom, and knights and gentlemen of prominence and influence. Their aims and purposes were not less lofty and aristocratic. Upon the general ground, that kings did first lay the foundations of their monarchies, by reserving to themselves the sovereign power (as fit it was), and dividing their kingdoms into counties, baronies, hundreds, and the like, they say,—

"This foundation being so certain, there is no reason for us to vary from it; and therefore we resolve to build our edifices upon it. So as we purpose to commit the management of our whole affairs there in general unto a governor, to be assisted by the advice and counsel of so many of the patentees as shall be there resident, together with the officers of State."

Among the "officers of State" were to be a treasurer, a marshal, an admiral, and a master of ordnance. Two parts of the whole territory were to be divided among the patentees, and the other third reserved for public uses; but the entire territory was to be formed into counties, baronies, hundreds, and the like. From every county and barony deputies were to be chosen to consult upon the laws to be framed, and to reform any notable abuses. Yet these are not to be assembled but by order of the President and Council in England, "who are to give life to the laws so to be made, as those to whom of right it best belongs." The counties and baronies were to be governed by the chief, and the officers under him, with a power of high and low justice, subject to an appeal, in some cases, to the supreme courts. The lords of counties might also divide their counties into manors and lordships, with courts for determining petty matters. When great cities had grown up, they

[1] "An estate of the highest nature that a subject under any government can possibly receive and hold." — *Sullivan, Land Titles in Massachusetts*, p. 36.

were to be made bodies politic to govern their own private affairs, with a right of representation by deputies or burgesses.[1]

There was a provision in the charter for its renewal and amendment, if changes should be found expedient; and measures were taken for a new patent, omitting the requirement that their government should be as near the laws of England as may be, and inserting authority to create titles of honor, and establish feudal tenures.

The chief managers of the affairs of the Council were Sir Ferdinando Gorges, a friend and fellow-soldier of Raleigh, who, ever since the failure of the Popham enterprise in Maine, had been striving to settle a plantation for trade and fishing there on his own account; Captain John Mason, who had been governor of Newfoundland; and the Earl of Warwick, the President. The patents issued to colonists, whether companies or single adventurers, were intended to conform to the political system they had adopted.

The influence of Gorges is seen in the project, which was early started, of laying out a county, on the general behalf, forty miles square, on the Kennebec River, and building a great city at the junction of the rivers Kennebec and Androscoggin. Two kinds of patents were provided for by the Council: one for private undertakers of petty plantations, who were to have a certain quantity of land allotted them at an annual rent, with conditions that they should not alienate without leave, and should settle a stated number of persons with cattle, &c., within a definite period; the other for such parties as proposed to build towns, with large numbers of people, having a government and magistrates, who were to have power to frame such laws and constitutions as the majority should think fit, subordinate to the State which was to be established, "until other order should be taken."

The grand schemes of the Council were not destined to experience even the promise of success. They began to fail from the very beginning of their operations. They had to contend not only against the active hostility of the Southern corporation, the remonstrances of the French, and the pertinacity

[1] Brief Relation of the President and Council. In Mass. Hist. Soc. Col., vol. xix.

of the Hollanders, who said little, while they encroached upon the fisheries, and inclined to take possession of Connecticut River; but the fishermen and fur-traders of England itself, whose rights, become prescriptive by long enjoyment, were so summarily interfered with. The matter was taken up by Parliament, and Sir Ferdinando Gorges was summoned to their bar. His argument, that the enlargement of the King's dominions and the advancement of religion were of more consequence than a disorderly course of fishing, which, except for their plantation, would soon be given over, (as so goodly a coast could not long be left unpeopled by the French, Spanish, or Dutch), if it did not satisfy the Commons, had weight with the King, who continued his favor and protection.

Gorges was to be the Governor of the new State; and, in 1623, the attempt was made to transfer an operative government to the American soil. The King had issued a proclamation enforcing their authority; and now Robert Gorges, son of Sir Ferdinando, was sent over as Lieutenant-General and Governor of New England, with a suite of officers, to establish his court at Massachusetts Bay; where a tract extending ten miles on the north-east side of the bay had been granted to him personally by patent.

This proved an unfortunate procedure. It increased the hostile feeling in England, so that, in a list of public grievances brought forward by Parliament, the first was the patent for New England. This public declaration of the House's dislike, Gorges tells us, "shook off all adventurers from the plantation, and made many of the patentees quit their interest." The Lieutenant-Governor and his military and ecclesiastical officers were advised to return home; and thus the plan of a State ruled by a Company, such as we have seen to succeed in India, failed in New England.

The other purpose of the Council, viz., to derive a profit from the fisheries and the fur-trade, with a view also to the ultimate advantages of territorial proprietorship, was continued in a feeble and desultory way. The great object was to get the country occupied at all events, and grants of land were made with a singular disregard of boundaries and of previous conveyance. Gorges and Mason were the only persons at all acquainted

with localities here, and Gorges had become despondent and almost desperate. Many members of the corporation gave up their partnership rather than pay their shares of the expenses; and it was difficult to find others to take their places. They tried the policy of dividing the whole territory among their members, in severalty, which came to nothing. Dissensions arose, and the Earl of Warwick withdrew from their meetings, but still kept the great seal, and evaded the calls that were made upon him to deliver it to the treasurer. They did not know what patents had been issued, and the President was "entreated to direct a course for finding out." It was proposed to send over a surveyor to settle limits, and commissioners to hear and determine grievances. The company became reduced from forty to twenty-one, notwithstanding recruits had been diligently sought among the merchants. Their records from November, 1632, to January, 1634, are wanting. When they begin again, the only remaining objects aimed at seem to have been a renewal of the policy of assigning to members distinct portions of the region embraced in their charter, and a surrender of the charter to the King, who is besought to graciously ratify the division, and confirm it by his own decree. This he does not appear ever to have formally done; and the Great Council for planting, ruling, and governing New England, came to an end in 1635, leaving no other incumbrances upon the soil than such as arose from a few larger patents, which depended for their force and validity very much upon the royal sanction they ultimately received, and some grants whose proprietors were in the country engaged in actual occupancy or management.

Dr. Palfrey, in his history, gives a list of twenty-four grants made, or supposed to have been made, by the Council for New England before the final partition attempted among themselves. From these we must take the doubtful, or at any rate futile, division among the partners alleged to have been effected in 1622; also the Charter of Nova Scotia to Sir William Alexander, which came directly from the King with the assent of the Council, how signified does not appear; also the supposed grants to Thompson, Weston, and Wollaston, which, if ever formally executed, were soon forfeited or abandoned, like some others that might be added from the Records; also the patent of Connecticut,

March 19, 1631, which proceeded from the Earl of Warwick personally, and was apparently founded on an actual or expected title passed, or to be passed, from the Council to himself. It is possible that, like the deed of Cape Ann to the Pilgrims, by Lord Sheffield in 1623, it was based on a contemplated division among the Council that was never perfected.[1] Grants were sometimes spoken of as made that were not drawn up; and sometimes the execution, long delayed, was not formally completed, so that the Council felt at liberty to confirm or reject them. To some patents there were conditions attached; such as rent, and the introduction of settlers within a certain time, to remain a certain time, which, if not complied with, might occasion a forfeiture.

Four in Dr. Palfrey's list are for the benefit of the Pilgrims at Plymouth; but the last and amplest absorbed or cancelled the others.

The first act of this nature for the benefit of the Pilgrims, was dated June 1, 1621. The other grants to them of 1622, 1627, and 1630, enlarged their property and powers at Plymouth, and gave them a large tract of land on the Kennebec, for trade with the Indians; by the special favor, it is said, of the Earl of Warwick, who seems to have been devoted to the interests of the Puritans.

There remain to be mentioned fourteen grants professedly emanating from the Council: —

1st, To Captain John Mason, March 9, 1622, of the coast and islands between Salem River and the Merrimack, called by him "*Mariana.*" It is said to have been imperfectly executed; and was disregarded in subsequent conveyances.

2d, To Gorges and Mason jointly, Aug. 10, 1622, of the country between the Merrimack and Kennebec Rivers, and sixty miles inland from their mouths, "which they intend to name the PROVINCE OF MAINE."

3d, To Robert Gorges, of ten miles from Boston towards Salem, just

[1] Historians have stated, without giving any authority, that the Connecticut territory was granted by the Council to Warwick, in 1630, and even that it was confirmed to him by the King. But the Council Records show that "a rough draft" of a patent for the Earl of Warwick, relating to the same territory, was under consideration three months after his conveyance to Lord Say and Sele, &c.

before he came over as Lieutenant-Governor. The *tenure* was by the sword, or *per gladium comitatus.*

4th, To a grandson of Sir F. Gorges and his associates, of twenty-four thousand acres, on both sides of York River in Maine, with the islands within three leagues of the coast. This patent, though referred by Gorges to 1623, was not executed till Dec. 2, 1631, and was reissued the following March, with a partial change of associates. The consideration was their engaging to build a town.

5th, To the Massachusetts Company, which, as confirmed by the royal charter, March 4, 1629, covered Mason's Mariana, the tract of Robert Gorges, and a part of the territory of Gorges and Mason; as it was to embrace the country from three miles north of every part of the Merrimack River to three miles south of Charles River.

6th, To Captain John Mason, Nov. 7, 1629, from the middle of the Merrimack River to the middle of the Piscataqua, and sixty miles inland from their mouths, and all islands within five leagues of the coast; "which he intends to name NEW HAMPSHIRE."

A series of grants succeeded, that are well known as prolific of suits and legal questions to the inhabitants of Maine. These are—

1st, The joint patents of what are now the towns of Saco and Biddeford.

2d, The Muscongus, or Lincoln grant, between the Muscongus and the Penobscot Rivers, which became the famous *Waldo* patent.

3d, The Lygonia, or Plough patent, of forty miles square, between Cape Porpous and Cape Elizabeth, including the now City of Portland. The date and the grantees are both uncertain.[1]

4th, The Swamscot patent, covering the towns of Dover, Durham, and Stratham.

5th, The Black Point grant of fifteen hundred acres in Scarborough.

6th, To Gorges and Mason, and certain associates, of lands on the Piscataqua, where some of their people had settled.

7th, To Richard Bradshaw, fifteen hundred acres above the head of "Pashippscot," where he had been living.[2]

8th, To Trelawney and Goodyear, a tract between the Black Point patent and the Casco River.

9th, The well-known Pemaquid patent of twelve thousand acres, Feb. 29, 1632, to be land "not *lately* granted, settled, and inhabited by any English."

[1] Willis, in Hist. of Portland.

[2] This is added from the Council Records.

All writers, until recently, have called the grant of Aug. 10, 1622, the *Laconia* grant. It was not till a copy of the grant of August, 1622, was obtained from England, by the Maine Historical Society, for publication in 1863, that the error became apparent. The real Laconia grant was dated Nov. 17, 1629, and conveyed to Gorges and Mason "all those lands and countries bordering upon the great lake, or lakes and rivers known by the name of the River and Lake, or Rivers and Lakes of the Iroquois," meaning thereby Lake Champlain. The final and effective grant of the Province of Maine was to Gorges, directly from the King, April 3, 1639, when the Council for New England had ceased to exist.

The heirs of Gorges and Mason, after vain efforts to sustain their title to Maine and New Hampshire, ultimately surrendered their claims for a moderate consideration; while the minor tracts, in process of time, came to be defined and adjusted by legislative and judicial interference.

It may be said, with probable truth, that, but for the success of Massachusetts, all other grants or patents from the Council would have come to nought; and that, on one side the French, and on the other the Dutch, or else the original natives, would have become possessed of all New England. It was so asserted when Massachusetts was summoned to show cause why its charter should not be revoked.

Yet the charter of the Massachusetts Company gave the death blow to the Council for New England. In connection with the litigious attacks of the Virginia Company, who desired to break up the monopoly of the fisheries, and the protest of the French ambassador, it is assigned, by themselves, as the principal cause of the surrender of their charter. They complained that their own grant to this company had been unfairly obtained and unreasonably enlarged, absorbing the tract of Robert Gorges, and riding over the heads of all those lords who had portions assigned them in the King's presence; that its members wholly excluded themselves from the government of the Council, and made themselves a free people, "whereby they did rend in pieces the first foundation of the building." On account of these troubles, and upon these considerations, they resolved to surrender their own patent to the King.

The political purpose of the founders of Massachusetts, and its friends in England, when clearly understood, will be seen to shed a new light upon many obscure points of our own and also of English history.

It is curious to observe, among the men who intended to come to New England, Pym, Hampden, Sir Arthur Hazlerig, and Oliver Cromwell. It is instructive to notice, that it was the Earl of Warwick who managed to obtain the patent for the Massachusetts Company, as Gorges relates; that it was the same earl who, on his own responsibility, conveyed Connecticut to Lord Say and Sele, Lord Rich, Charles Fiennes, John Pym, John Hampden, Herbert Pelham, and others; and then to remark that, in the revolution which soon took place in England, the Earl of Warwick, Lord Say and Sele, and Lord Mandeville, the son-in-law of Warwick, are designated by Clarendon as chief managers among the Peers; while in the House of Commons, Pym, Hampden, Sir Harry Vane, and Nathaniel Fiennes, brother of Charles, were principal leaders. From these, and many other coincidences, it looks as if the revolution at home was only a carrying out and extending of the political experiment which it had first been their intention to try in New England. And the impression is strengthened, when we learn that members of the original Massachusetts Company took a prominent part in all the public movements of the revolutionary party, — in Parliament, in the Army, in the Assembly of Divines at Westminster, and among the Judges appointed for the trial of the King. It is not strange that the lesser purpose, and the more limited intention, should have been forgotten or obscured, amid the exciting events of the grander and more comprehensive undertaking.[1]

A more particular account of the grants made or proposed by the Council, which would have been tedious in a lecture before a general audience, is given in a supplement.

[1] Dr. Palfrey (Hist. of N. E., vol. i. p. 308) refers to the probable purpose of a renovated England in America entertained by the Puritan leaders, in view of the clouds that were gathering over the political prospects at home; and quotes a remark of Burke, to whom the same reflection had occurred. See also Hist. of N. E., vol. i. p. 390, n.

SUPPLEMENT.

EVERY one at all familiar with the grants from the Council for New England must be aware that their history would properly fill the pages of a large volume. All that a single lecture can accomplish, even with the aid of a supplement, is to take the place of an introductory chapter, giving some account of the subject-matter, and an abstract of the most important facts and conclusions. It is believed that the list of grants here presented is more full and more correct than any before attempted; but in a case where our most careful historians have been led into remarkable errors, it would be unreasonable to demand absolute accuracy or completeness. The patience required for the selection and verification of the particulars now brought together, the reader will hardly be able to appreciate.

SUMMARY OF GRANTS FROM THE GREAT COUNCIL FOR NEW ENGLAND.

No. 1. — The first grant from the Council, of which there is any record, was taken out in the name of John Peirce, citizen and clothworker of London, and his associates, June 1, 1621, for the benefit of the Pilgrims at Plymouth. It allowed one hundred acres to each planter within seven years, free liberty to fish on the coast of New England, and fifteen hundred acres for public uses. After seven years, a rent of two shillings for every one hundred acres to be paid annually. The lands having been properly surveyed and set out by metes and bounds at the charge of the grantees, upon reasonable request within seven years they are to be confirmed by deed, and letters of incorporation granted, with liberty to make laws and constitutions of government. In the mean time, the undertakers and planters are authorized to establish such laws and ordinances, and appoint such officers, as they shall by most voices agree upon. This patent was first printed from the original manuscript, with an introduction and notes, by Charles Deane, Esq., in 1854. The land was to be taken anywhere not within ten miles of land already inhabited, or located by authority of the Council, unless it be on the opposite side of some river.

No. 2. — 1622, March 9. Captain John Mason's "*Mariana*." The headland "known by the name of Tragabigsenda, or Cape Anne, with the north, south, and east shores thereof," from Naumkeag River, to a river north-westward from the Cape (the Merrimack), then up that river to its head, thence across to the head of the other river; with all the islands within three miles of the shore. Hubbard, Hist. of N. E., pp. 614–16.

No. 3. — 1622, April 20. To John Peirce. This was an attempt of Peirce to surrender the indenture of June 1, 1621, and take a deed of the lands to himself, his heirs, associates, and assigns. When it was ascertained that his associates were not privy to this movement, he was compelled to agree to

submit the matter to the authority and pleasure of the Council. See Council Records, in Proceedings of American Antiquarian Society of April, 1867.

No. 4. — 1622, May 31. In the Records of the Council of this date, it is stated, that "order is given for patents to be drawn for the Earl of Warwick, and his associates, the Lord Gorges, Sir Robert Mansell, Sir Ferdinando Gorges." Dr. Palfrey regards this order as referring to a division of the country, from the Bay of Fundy to Narraganset Bay, among twenty associates, in which the region about Cape Ann fell to Lord Sheffield, who sold a patent for it to the New-Plymouth people. Captain John Smith, in his "Generall Historie," published in 1624, says that New England was "engrossed by twenty patentees who divided my map into twenty parts, and cast lots for their shares." Mr. Thornton, in his interesting work on Cape Ann, has a map from Purchas representing this division, and a fac-simile of the patent from Lord Sheffield above mentioned. There may have been such a division suggested when Captain Smith wrote, and Purchas, writing at the same date, may have prepared the map to correspond with that expectation. The above order from the Records of the Council seems, however, to be limited in its application to the Earl of Warwick, and *three* associates; and there is no account of such a division as the map exhibits in the Records, as we have them, or in the "Relation of the President and Council," or in the "Briefe Narration" of Gorges, or in the act of the Resignation of the Charter, where it would naturally appear. The division referred to by Gorges in his "Briefe Narration," and which is described in the proceedings for the surrender of the charter, is a very different one, and quite inconsistent with that exhibited by the map. It is not improbable that the distribution mentioned by Smith, may be alluded to in the agreement for the division, Feb. 3, 1634–5, thus: "Forasmuch as . . . in the 8th (? 18th) year of the reign of King James, of blessed memory, in whose presence lots were drawn for settling of divers and sundry divisions of land, on the sea-coast of the said country, upon most of us, *which hitherto have never been confirmed in the said lands so allotted*, and to the intent that every one of us according to equity, and in some reasonable manner answerable to his adventures or other interest, may enjoy a proportion of the said country to be immediately holden of his Majesty, we therefore," &c. The deed from Lord Sheffield, dated Jan. 1, 1623–4, is in direct conflict with the grant from the Council to Mason, May 9, 1622. (See above, No. 2.) Lord Sheffield's conveyance of Cape Ann, like that of Connecticut by the Earl of Warwick, was probably based upon a proposed division that was never legally completed. See note at the end of this Supplement.

No. 5. — 1622, Aug. 10. By indenture to Sir Ferdinando Gorges and Captain John Mason, "All that part of the mainland in New England lying upon the sea-coast, betwixt the rivers of Merrimack and Sagadahoc, and to the furthest heads of the said rivers, and so forwards up into the land westward, until threescore miles be finished from the first entrance of the aforesaid rivers, and half way over; that is to say, to the midst of the said two rivers," "together with all the islands and islets within five leagues' distance of the premises," which, it is stated, the grantees with the consent of the President and Council intend to name "*The Province of Maine.*"

The error of Dr. Belknap in supposing this to be the *Laconia* grant, has been repeated by historians to the present time. Mr. Deane, who saw the true Laconia deed in the Record Office in London, two years ago, gives the correct statement in the Report of the Council of the American Antiquarian Society, Oct. 21, 1868. The grant of Aug. 10, 1622, is given in full in the Provincial Papers of New Hampshire, edited by Dr. Bouton (Concord, 1867), who also makes the correction. Hutchinson, Hist., vol. i. p. 282, ed. of 1795, says this grant "did not appear to have been signed, sealed, or witnessed by any order of the Council." See Provincial Papers of New Hampshire, p. 28, *note*. For an interesting opinion of Sir William Jones, the King's Attorney-General, in 1679, on the validity of the several grants to Mason, on the absence of any right in the Council for New England to confer powers of government, and on the requirement of their charter that their grants should appear to be the acts of a majority of the Council present at a lawful meeting, see Hubbard's Hist. of N. E., pp. 616–621.

No. 6. — 1622, Nov. 16. The Council Records speak of Mr. Thompson's patent as "this day signed." In the Appendix to the memorial volume of the Maine Historical Society, is a copy of an ancient, but imperfect list of New-England patents, from the Record Office, London, in which the first named is "a patent to David Thompson, M. Jobe, M. Sherwood, of Plimouth, for a pt. of Piscattowa River." Whatever Thompson's grant may have been, it came to nothing. He was a Scotchman, apparently in the service of the Gorges' family, and lived at one time on the Piscataqua River; and at another, on "*Thompson's Island*," in Boston Harbor.

No. 7. — 1622. Thomas Weston was supposed to have a patent of land at Wessagusset (Weymouth, Mass.). Bradford, p. 122. "Weston's patent is not extant, and little is known respecting it." Deane, in Bradford, p. 124, *note*.

No. 8. — 1622, Dec. 30. To Robert Gorges, son of Sir Ferdinando, "All that part of the mainland commonly called Messachusiac, on the north-east side of the Bay known by the name of Massachuset, together with all the shores along the sea for ten English miles in a strait line towards the north-east, and thirty miles into the mainland through all the breadth aforesaid," including the islands, within three miles of any part of said land, not before granted. The grant is given at length in the "Briefe Narration," chap. xxiii. Its tenure is by "the sword," *per Gladium Comitatus*. When Robert Gorges came over, he located himself at Wessagusset, which was not within his grant. Among the manuscript records of Massachusetts is a memorandum to the effect, that, Robert Gorges having died without issue, the land descended to his eldest brother, John, who conveyed it to Sir William Brereton, Jan. 10, 1628. Brereton died, leaving a son and a daughter. The son died, and the daughter married Edmund Lenthall; and their only daughter and heir married Mr. Levett, of the Inner Temple, who claimed the land in right of his wife. See note to the "Briefe Narration" of Gorges, in Coll. of Me. Hist. Soc., vol. ii. p. 46.

No. 9. — 1623. To Ferdinando Gorges, grandson of Sir Ferdinando, and his associates, among whom were "Walter Norton, Lieutenant-Colonel Thomas Coppyn, Esq., Samuel Maverick, Esq., Thomas Graves, Gent. (an engineer), Raphe Glover, merchant, William Jeffryes, Gent., John Busley,

Gent., Joel Woolsey, Gent., all of New England." The date of 1623 is derived from the "Briefe Narration," chap. xxv., where Gorges says his grandson, and some of his associates, hastened to take possession at the time, carrying with them their families; but according to the Council Records, the date of sealing the patent was Dec. 2, 1631. It was renewed March 2, 1632, with some change in the associates, and the former patent cancelled. The grant was first, of one hundred acres to each person transported within seven years, if he remained three years; second, of twelve thousand more, to the associates, on the east side of the river Agamenticus, on the coast three miles, and into the land so far as to contain twelve thousand acres, and one hundred acres more for each person; third, to F. Gorges himself, besides the above, twelve thousand acres on the opposite or western side of the river along the coast westerly to the land appropriated to the plantation at Pascataquack (Portsmouth), and so along the river Agamenticus, and the bounds of Pascataquack, into the mainland so far as to contain twelve thousand acres; with all the islands within three leagues into the ocean. In consideration that they have undertaken to build a town. Two shillings to be paid yearly for every one hundred acres of arable land after seven years. This description is from the Records of the Council, in Proceedings of the American Society of April, 1867. See also respecting this grant, Coll. of Me. Hist. Soc., vol. ii. pp. 49, 50, *note*. At a meeting of the Council, March 22, 1637 (after the surrender of their charter), it is stated that this grant was renewed to Edward Godfrey and others, and "this day the seal of the company was set thereunto."

No. 10. — 1628. To the Plymouth people, of lands on the Kennebec. Renewed and enlarged the next year. Bradford, p. 232.

No. 11. — The Massachusetts patent of March 19, 1628, made into a Royal charter, March 4, 1629. Dr. Palfrey expresses an opinion, that the patentees among whom the coast of New England had been partitioned six years before surrendered their claims, founded on the following record of the Massachusetts Company: "Sept. 29, 1629. — It is thought fit, and ordered, that the secretary shall write out a copy of the former grant to the Earl of Warwick and others, which was by them resigned to this company, to be presented to his lordship."

The patent of the Massachusetts Company from the New-England Council is not extant; and there is some mystery attending the manner of its procurement, as well as about its original extent. Sir F. Gorges says, that, on the request of the Earl of Warwick, he consented to a grant that should not be prejudicial to the interests of his son Robert. In the act of resignation of their charter by the Council, they say, that the Massachusetts Company, "presenting the names of honest and religious men, easily obtained their first desires; but those being once gotten, they used other means to advance themselves a step beyond their first proportions to a second grant, surreptitiously gotten, of other lands also, justly passed unto Captain Robert Gorges long before." Robert Mason, petitioning the King, in 1676, for possession of the lands granted to his grandfather, declares that the Massachusetts Company "did surreptitiously, and *unknown to the said Council*, get the seal of the said Council affixed to a grant of certain lands;" and did, by their subtile practices, get a

confirmation under the great seal of England. In their answer to this petition, the Massachusetts authorities deny the charge, no doubt with sincerity; but all circumstances leave an impression on the mind that, by the influence, perhaps by the *management*, of the Earl of Warwick, advantages were gained, which many, if not most, of the Council would have objected to. By the favor of Warwick, the Plymouth people obtained their lands on the Kennebec; and the patent of Connecticut was made in his own name, by what authority does not sufficiently appear. These facts may explain the dissatisfaction which arose between the Council and Warwick, their president, and the efforts of the Council to get the seal out of his possession. He seems not to have cared for personal proprietorship, but to have desired to give his Puritan friends the advantage of his official position and influence.

No. 12.—1629, Nov. 7. By indenture, to Captain John Mason, part of the same territory which was conveyed by a similar deed to Gorges and Mason, jointly, Aug. 10, 1622. The difference being, that instead of extending from the middle of the Merrimack River to the middle of the *Sagadahoc*, on the coast, and back into the interior sixty miles between those limits, this grant extends no farther than the middle of the Piscataqua River, but the same distance into the interior between the Merrimack and the Piscataqua, including also islands within five leagues of the shore; "which the said Captain John Mason, with the consent of the President and Council, intends to name *New Hampshire*." In the deed to Gorges and Mason, it was proposed to call the whole territory the *Province of Maine*. The form and general phraseology of the two deeds are alike. If the first instrument was valid, this one, of necessity, could be of no effect. See above, No. 5; Provincial Papers of New Hampshire, pp. 21 and 28, *note;* Hazard, vol. i. p. 289.

No. 13.—1629, Nov. 17. This is the true *Laconia* grant, which, by a mistake, originating doubtless in a misprint, has sometimes had the date Nov. 27, instead of Nov. 17, assigned to it. There is a copy of it in the office of the Secretary of State of Massachusetts. It embraces, in substance, the lands bordering upon the great lake (Champlain), or lakes and rivers commonly known by the name of the river and lake, or rivers and lakes, of the Iroquois; together with those lakes and rivers, and the land within ten miles of any part of them on the south or east, and from the west end or sides so far to the west as shall extend half-way into the next great lake to the westward; thence northward into the north side of the main river running from the great western lakes into the river of Canada, including all islands within the precincts.

The nullity of this grant is shown by the fact, that so many careful historians have confounded it with that of Aug. 10, 1622, another imperfect and ineffectual instrument. See N. H. Provincial Papers, vol. i. pp. 28 and 38. Hubbard, Hist. of N. E., chap. xxxi., says, that after three years of fruitless endeavors for the more full discovery of "an imaginary Province called Laconia," the agents of Gorges returned to England with a "non est inventa Provincia."

No. 14.—1629, o.s., Jan. 13. The last Plymouth patent, to William Bradford and his associates, in consideration that they have lived nine years in New England, and planted a town at their own cost, and are able to relieve new planters: All that part of New England between the middle of Cohasset River

and the middle of Narraganset River, and up from the mouths of those rivers in a strait line into the mainland as far as the utmost limits of the country called "Pokenacutt, alias Sowamsett;" and bounded on the east by the ocean, without including islands on the coast. And as the grantees have no convenient place for trading or fishing within their own precincts, there is also conveyed to them all that tract of land, between, or extending from, the utmost limits of Cobbisconte, which adjoins the river Kennebec, towards the western ocean, and a place called the Falls at Nequamkike; and the space of fifteen miles on each side of the river Kennebec, and all the said river Kennebec that lies within the said limits and bounds, eastward, westward, northward, or southward, last above mentioned. The patent gave a right of passage to and from the ocean, and the right of fishing on the neighboring shores, not inhabited or otherwise disposed of, and also privileges of administration. It appears to have no other signature than that of the Earl of Warwick.

The Plymouth people tried in vain to procure a charter from the Crown, with powers of government. They strengthened their rights in Maine by deeds from the Indians, and endeavored to establish settlements; but tired of the vexation which that property gave them, they sold their entire interest, in 1661, to four persons, for four hundred pounds. In 1753, the then owners became a corporation, by the name of "the Proprietors of the Kennebec Purchase;" and, after much controversy and litigation, the obscure boundaries were ultimately adjusted. See Gardiner's "Hist. of the Kennebec Purchase," in Coll. of Maine Hist. Society, vol. ii. The patent is in Hazard, vol. i. pp. 298–303.

No. 15. — 1630, Feb. 12. At this date, two deeds were issued of the land between Cape Elizabeth and Cape Porpoise in Maine, each of four miles along the coast, and eight miles into the mainland; one on the north side of the Saco River to Thomas Lewis and Richard Bonython, the other on the south side of the Saco River to John Oldham and Richard Vines. From these grants have sprung the two towns of Saco and Biddeford, retaining nearly the same limits. Hist. of Saco and Biddeford, by George Folsom.

No. 16. — 1630, March 13. The Muscongus grant, afterwards known as the Waldo patent. The abstract of this grant, in Hazard, Coll. vol. i. pp. 304, 305, taken from the Maine Records, is unintelligible. Williamson, Hist. of Me. vol. i. p. 240, describes it as extending from the seaboard, between the rivers Penobscot and Muscongus, to an unsurveyed line running east and west so far north as would, without interfering with any other patent, embrace a territory equal to thirty miles square; and adds, in a note, that the north line, as since settled, is in the south line of Hampden, Newbury, and Dixmont. The grant was to John Beauchamp and Thomas Leverett, of England. Leverett is said to have succeeded to the property on the death of Beauchamp. John Leverett, President of Harvard College, as sole heir of his grandfather, became the owner in 1715. By the admission of partners, a company was formed, consisting of thirty proprietors, who first employed Brigadier-General Samuel Waldo as agent, and ultimately assigned to him the largest interest in the patent. Coll. of Me. Hist. Society, vol. vi. art. xv.

No. 17. — 1630. The Lygonia, or Plough patent, considered to extend from Kennebunk River to Harpswell in Casco Bay, or, as usually stated, from Cape

Porpoise to Cape Elizabeth, and forty miles inland. Hubbard, Ind. Wars, part ii. p. 9, says the patent was granted in the year 1630, and signed by the Earl of Warwick and Sir Ferdinando Gorges. Willis, Hist. of Portland, p. 29, says he has never "been able to discover this patent, nor ascertain its date, nor who are the patentees." Different names are given in different accounts. An unsuccessful attempt at settlement was made in 1631. In 1643 the patent was transferred to Alexander Rigby, a rich English lawyer, who appointed George Cleaves as his deputy. The contest of conflicting jurisdictions between the representative of Rigby and the representatives of Gorges was only ended when Massachusetts took possession of the whole territory in 1672. Sullivan, Hist. of Me., pp. 309–319; ib., "Land Titles," p. 44; Williamson, Hist. of Me. vol. i. p. 238; Folsom, Hist. of Saco and Biddeford, pp. 26–28.

No. 18. — 1631, March 12. To Edward Hilton, "all that part of the river Piscataqua called Hilton's Point, with the S. side of the said river up to the falls of Squamscot (or Swamscot), and three miles into the mainland for breadth." Following Dr. Belknap and Dr. Palfrey, I stated in the lecture that this grant covered the towns of Dover, Durham, and Stratham. But in the recently published Provincial Papers of New Hampshire, p. 29, Dr. Bouton, the editor, says, "No document relating to New Hampshire has been so grossly misrepresented as this. . . . It covered only Hilton's Point; . . . and the whole did not exceed a township five miles square." Its extent and its ownership, in 1656, as shown in a record of partition, by authority of Massachusetts, may be seen in ibid., pp. 221–223.

No. 19. — 1631, Nov. 4, by the Council Records (Willis, and others, say Nov. 1). To Thomas Cammock, fifteen hundred acres, lying upon the mainland along the sea-coast, on the east side of Black Point River. This is now a part of Scarborough, and included Stratton's islands. Possession given in 1633; patent confirmed by Gorges in 1640. The tract is now held under this title. Willis, Hist. of Portland, p. 31.

No. 20. — 1631, Nov. 4. To Richard Bradshaw, "fifteen hundred acres, to be allotted above the head of Pashippscot (Pejepscot), on the north side thereof, *not formerly granted to any other*." Council Records. This, and the grant to Cammock, were in consideration that the grantees had been living on the premises for some years.

The Council Records of Dec. 2, 1631, say, that Lord Gorges and Sir Ferdinando Gorges gave order for two patents, one for Walter Bagnall for a small island, called Richmond Island, and fifteen hundred acres on the mainland, to be selected by Walter Neale and Richard Vines; another for John Stratton, of two thousand acres, on the south side of Cape Porpoise, and "on the other side northwards into the south side of the harbor's mouth of Cape Porpoise." Sainsbury's Calendar, p. 137, has it "John Stratton of Shotley, co. Suffolk, and his associates."

Bagnall was at Richmond Island in 1628, where he was killed by the Indians, Oct. 3, 1631 (previous to the date above stated). Willis, Hist. of Portland, p. 25.

No. 21. — 1631, Nov. 4. To Sir Ferdinando Gorges and Captain John Mason, and their associates, a portion of land on the Piscataqua River, "along the seashore westward five miles, and by an imaginary line into the mainland,

north to the bounds of a plantation belonging to Edward Hilton; and the islands within the same river eastward, together with three miles along the shore to the eastward of said river, and opposite to the habitation and plantation where Captain Neale lives, and up into the mainland northerly, by all the breadth aforesaid, thirty miles; with the lakes at the head of said river." In consideration of service formerly done, and the settlement there by Captain Neale, the erection of salt-pans, &c.

They were to pay to the Council forty shillings sterling, payable at the Assurance House, Royal Exchange, London, if demanded. First payment at the Feast of St. Michael, 1632, "and so for all service from year to year." Abstract in the Council Records. Hubbard, Hist. of N. E., chap. xxxi., says, that in his time, a copy of this indenture was extant at Portsmouth. He makes the date Nov. 3, 1631, and the instrument to be without signature or seal; but he says, "it seems to be of as much force as other instruments of like nature produced on such like accounts at the present time." The Council Records state that the patent was *sealed* Nov. 4. Hubbard calls the sum to be paid forty-eight pounds per annum, instead of the forty shillings mentioned in the Records. The names of the associates are in Hubbard.

No. 22. — 1631, Dec. 1. To Robert Trelawny and Moses Goodyear, the tract lying between Cammock's patent "and the bay and river of Casco, and extending northwards into the mainland, so far as the limits and bounds of the lands granted to the said Thomas Cammock, do and ought to extend towards the north." It was claimed that this grant included Cape Elizabeth, and nearly all the ancient town of Falmouth, and part of Gorham and Richmond island. A contest was maintained, in reference to boundaries, for many years, extending beyond the lives of the first settlers. Willis, Hist. of Portland, pp. 32, 33; Council Records.

No. 23. — 1632, Feb. 29. To Robert Aldworth and Giles Elbridge: first. one hundred acres for every person transported by them within seven years, adjacent to twelve thousand acres, afterwards mentioned, and not lately granted, or settled and inhabited, by any English. Second, twelve thousand acres more to be laid out near the river Pemaquid, along the sea-coast as the coast lieth, and up the river as far as may contain the said twelve thousand acres and the hundred acres for each person transported, together with all the islands opposite their coast within three leagues into the ocean. In consideration that they have undertaken to build a town, &c. Powers of government, or administration, are also expressed in the deed, which was signed by the Earl of Warwick and Sir Ferdinando Gorges. Pemaquid, like other territories in Maine, has been a subject of much controversy, and has experienced many vicissitudes. It is said that one of its sons is preparing a history of its fortunes. "*Ancient* Pemaquid" has already been the subject of an Historical Review, by Mr. Thornton. A notarial copy on parchment of the original deed, and two volumes of the records of its proprietors, from 1743 to 1774, are in the library of the American Antiquarian Society.

No. 24. — 1632, June 16. Under this date, in Mr. Sainsbury's Calendar of Colonial Papers in the State Paper Office, London, is the following entry: "Grant of the Council for New England to George Way and Thomas Purchas,

of certain lands in New England, called the River Bishopscotte, and all that bounds and limits the mainland adjoining the river to the extent of two miles." By Bishopscotte is meant *Pejepscot*, now ~~New~~ Brunswick. Purchas, it is said, took possession in 1628, and lived there many years. In 1639, he conveyed the title and jurisdiction to Massachusetts, reserving the interest and possession of such lands as he should use and improve within seven years. Hazard, vol. i. p. 457. The country was depopulated during the Indian war of 1675; after which, Richard Wharton obtained the claims of both Purchas and Way, expecting a confirmation from the King, but died before his plans were completed. See Willis, Hist. of Portland, p. 24; Coll. of Me. Hist. Society, vol. iii. articles v. and vi.

The original deed to Way and Purchas has long since been lost, and no record of it remains. This grant was the subject of a long and bitter controversy between the Pejepscot proprietors and other claimants, not finally settled till about 1814. Willis, Hist. of Portland, p. 64, *note*.

The efforts of the Council to divide New England into provinces, or lordships, and distribute these among themselves, remain to be noticed. There are indications that such a design was entertained at an early period; but the charter was found to be defective, and arrangements were soon made for a new one, from which all the patentees who had not paid their dues were to be excluded. To entitle a partner to the benefit of the lands and the privileges of a patentee, a payment of £110 was required. It was voted that delinquents should forfeit all interest under the charter, and their rights and privileges be transferred to persons willing to take their places and make the payments. Not more than half of the original patentees accepted the conditions of membership, and fewer still seem to have redeemed their pledges.

At various dates in the Records, — May 31, 1622, July 24, 1622, June 21, and 26, 1632, — agreements and orders are introduced having in view the assignment of territory, more or less particularly designated, to certain members. But all these orders and agreements, whatever may have been the intentions of the Council at the time, were treated as of no validity when they came to surrender the charter to the King. In preparation for that event, they met on the 3d of February, 1634–5, and divided the coast of New England into eight parts; viz.: —

1st, From the southern limits in the fortieth degree of latitude to Hudson's River.

2d, From Hudson's River to a river or creek ("near a place called Redunes or Reddownes") about sixty miles eastward.

3d, From that river eastward about forty-five miles, to a river or creek called Fresh River.

4th, From the Connecticut River to the Narraganset River, accounted about sixty miles.

5th, From Narraganset River around Cape Cod to Naumkeag (Salem).

6th, From Naumkeag to Piscataqua Harbor and River.

7th, From Piscataqua Harbor to the Kennebec River.

8th, From the Kennebec River to the St. Croix.

By comparing the Council Records, the "Briefe Narration" of Gorges, and Hubbard's History of New England, we find that the *First* portion was assigned to the Earl of Arundel (Gorges says Lord Mulgrave, who was originally Lord Sheffield); the *Second* to the Duke of Richmond (in place of the Duke of Lenox); the *Third* to the Earl of Carlisle; the *Fourth* to Lord Gorges; the *Fifth* to the Marquis of Hamilton; the *Sixth* to Captain John Mason; the *Seventh* to Sir Ferdinando Gorges; the *Eighth* to Lord Alexander.

Each of these divisions was to extend back into the interior sixty miles, except the last, which reached to the "river of Canada."

Each division, except the last two, was to have, in addition, ten thousand acres on the "east part of Sagadahoc." The seventh division was to have with it the north half of the Isles of Shoals and the Isles of Capawock, Nautican, &c., near Cape Cod; and the eighth division the Island called Mattawack, or the Long Island, west of Cape Cod. The south half of the Isles of Shoals was to go with the division of Captain Mason.

There is apparently a space omitted between "Fresh River," wherever that was, and the Connecticut.

These divisions are described with particularity in the Records of the Council. It is stated that the grants were signed and delivered on the fourteenth day of April; that, on the eighteenth, leases, for three thousand years, of the several divisions, were made to the persons interested; and that on the twenty-second, deeds of feofment were made to them.

To every one that had previously a lawful grant of lands was reserved the freehold with its rights, he "laying down his *jura regalia* (if he have any) and paying some small acknowledgment, for that he is now to hold his land anew of the proprietor of the division."

It is to be inferred that this remnant of the Council included all who were then desirous, or qualified, to receive assignments of territory.

The account of this division by Hubbard, Hist. of N. E., chap. xxxi., differs from that in the Records in many important particulars, and is less likely to be correct.

On the 26th of April, 1635, the Council prepared a petition to the King that he would cause patents to be made for the several divisions, to be held immediately from himself; and on the 5th of May resolved that the deeds should be acknowledged before a Master in Chancery, and enrolled before the surrender of the charter, and the King be requested to confirm them under the Great Seal; *also to prosecute a suit at law for the repeal of the Massachusetts patent.* They also prepared the form of an acceptance for the King to adopt on their surrender of the charter, and a declaration of the reasons on account of which the surrender was made. The formal resignation was dated June 7, 1635.

The acceptance of the surrender may have been held in abeyance for a time, as meetings of the Council are recorded, Nov. 26, 1635, March 22, 1637, and Nov. 1, 1638, at which business was transacted. The Earl of Lindsay desired to have a proportion of land allotted to him; which was assented to, to be "on y^e^ river where the Flemings are seated," above the Duke of Richmond. Lord Maltravers wished for "a degree more in longitude and latitude joining his limits (had he taken the place of some one of the eight grantees?), which the

Council were willing to assent to, if he would declare in what direction he wanted it. The Earl of Sterling's (Lord Alexander's) proportion was carried more distinctly to the Kennebec River; and Lord Gorges, and Sir Ferdinando Gorges, were each allowed sixty miles further up into the mainland.

Our supplement can afford no space for comments or inferences; but it is apparent that no such division as is referred to by Captain John Smith in 1624, and laid down on the map published by Purchas, was recognized by the Council as valid, and that no territorial rights were admitted as having belonged to the Earl of Warwick. The charter of Massachusetts was to be annulled, the entire coast of New England divided among the eight Proprietary's above named, and all remaining rights and powers belonging to the Grand Patent surrendered to the King, Sir Ferdinando Gorges to be made his Lieutenant or Governor over the whole country as a province of the Crown. Political events at home prevented the accomplishment of this design. Captain John Mason and Sir Ferdinando Gorges alone contrived to secure permanent advantages to themselves. No other executed deed of any of the proposed divisions has come down to us but that to Mason, April 22, 1635, without, however, a confirmation from the King. Gorges received his division, with the additional sixty miles into the interior, in the form of a charter from the Crown, dated April 3, 1639. Obscurity of description, the overlapping of boundaries in different deeds, the introduction of powers which the Council could not legally confer (such as those of government and administration), and imperfect execution, seem to have rendered most of their early grants unsound in their own estimation; and perhaps all of them would have proved to be void or voidable if subjected to a strict legal test. It will simplify the subject, if we strike from the list of those which preceded the final division the first eight and the thirteenth as of no subsequent consequence, and rest the claims of Mason and Gorges upon the deeds to Mason of Nov. 7, 1629 and April 22, 1635, and the charter to Gorges of April 3, 1639, as some of their representatives appear to have done (see Prov. Papers of N.H. p. 28, *note*). Massachusetts ultimately took the place of these great proprietors, and extended her jurisdiction over most of the territory covering the minor patents, whose adjustment among the parties interested was the work of much time, and a great deal of law.

NOTE.

In Hubbard's History of N. E., pp. 231–2, is what purports to be an attested copy of so much of the agreement for a division among themselves, by the Council, as relates to the portion assigned to Captain John Mason. It is signed by the other seven Council members. It contains also the paragraphs which, in the Records of the Council, precede and follow the list and descriptions of the several divisions; and an error in copying the first paragraph has increased the confusion heretofore attending this subject. The *agreement*, as the Records show, was dated Feb. 3, 1634; and the copyist of Hubbard's document introduced that date into the first paragraph, which alludes to an attempt in the lifetime of King James, and in his presence, to effect a similar division, making it appear as if the attempt occurred on that date. In the second edition of Hubbard, the editor, Mr. Harris, observing that there must be a mistake, altered the figures from 1634 to 1624; a worse error, as it has led to the belief that a division was actually made on the 3d of February, 1624. The *Records* mention no such date.

It is proper to state, that the original Records of the Council for New England are not extant. The copy printed by the American Antiquarian Society, in 1867, was obtained by me in London, at the State Paper Office, where the parts so recovered exist in the form of a transcript, apparently made for a judicial purpose. Our historians were already familiar with them there.

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